

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1255 of 1997

in

SPECIAL CIVIL APPLICATION No 3512 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VT PUROHIT

Versus

INQUIRY COMMISSIONER DIVISION 2

Appearance:

MS REKHA B MAHARAJA for Appellant
NOTICE SERVED BY DS for Respondent No. 1
MR DA BAMBHANIA for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 03/04/98

ORAL JUDGEMENT

Admitted. Mr.D.A.Bambhania, Additional Government Pleader appears and waives service of notice of admission of appeal. In the facts and circumstances of the case this matter is taken up to day for final hearing.

This appeal is filed against an order passed by the learned Single Judge summarily dismissing Special Civil Application No. 3512 of 1997 on September 5, 1997.

The appellant is original petitioner. He filed the above petition for appropriate writ, direction and/or order restraining the respondent authorities from holding fresh inquiry and from passing any order against the petitioner. According to the petitioner, an inquiry was initiated against him in the year 1992. Even at that time it was belated. However, on April 30, 1992, the appellant was retired on reaching the age of superannuation. It is asserted by the petitioner that at that time all the proceedings came to be over and he was verbally told that the inquiry against him resulted into exoneration and that no charges were proved against him. After considerable long time, again fresh inquiry on the same allegations were initiated against him being No.37 of 1996 which is clearly without power, authority or jurisdiction and that such inquiry could not have been initiated against him. It is in the nature of double jeopardy and that it would seriously affect the petitioner's right in getting pension. It is also contended that as per settled law, inquiry must be initiated within a reasonable period and if there is gross and inordinate delay, that by itself is a good ground for quashing the inquiry.

The learned Single Judge after considering the affidavit-in-reply filed on behalf of the authorities held that it was not a fresh inquiry on the same allegations which were the subject matter of earlier inquiry. In the counter, it was stated that since the appellant reached age of superannuation, the inquiry was continued by invoking the provisions of Rule 189-A of the Bombay Civil Services Rules. It was further stated that when pensionary benefits were not extended to the appellant, a petition was filed and some order was also passed. It was, therefore, said that the inquiry was not over and hence interference at this stage is not called for.

The learned Single Judge upholding the contention of the respondent, dismissed the petition. The learned Single Judge also directed the petitioner to pay Rs.5000/- to the respondent as costs. Being aggrieved by the said order the present Letters Patent Appeal is filed.

Ms.Maharaja reiterated all the contentions raised before the learned Single Judge. Firstly the inquiry

came to an end and the appellant was exonerated. No fresh inquiry thereafter can be started. Secondly, there was gross and inordinate delay on the part of the authority and on that ground also the inquiry is required to be quashed. She also submitted that almost in similar circumstances another petition being Spl.C.A.No.5418 of 1997 is pending in this court, in which rule is issued and interim relief is granted. Finally the order of cost directing the appellant to pay Rs.5000/- to the respondents deserves to be quashed and set aside.

Mr.Bambhania, on the other hand, supported the order passed by the learned Single Judge.

In the facts and circumstances of the case, in our opinion, no interference is called for so far as the order passed by the learned Single Judge dismissing the petition is concerned. From the record, it is clear that though it was asserted by the appellant that earlier inquiry resulted into appellant's exoneration, there is nothing on record to show that such order was passed at any point of time by the authority. In the affidavit, it was specifically stated that the proceedings were not over and as the appellant was to reach the age of superannuation the inquiry was to be continued under Rule 189-A of the Rules. Mr.Bambhania also contended that even at earlier occasion when the appellant approached this court by filing Special Civil Application No. 4412 of 1992 the learned Single Judge granted limited relief regarding pensionary benefits and that petition is pending even to day. In interim order, last sentence reads as under:

"The respondent is directed to see that the inquiries against the petitioner are disposed of as early as possible."

Mr.Bambhania contended that against the said order the State had filed Letters Patent Appeal as well as Special Leave Petition. The appellant, however, did not challenge that order, meaning thereby, that the appellant accepted the order wherein a direction was issued to complete the inquiry. It stands to day.

Looking to affidavit-in-reply, it is clear that the inquiry is not a new one but an old inquiry which is renumbered as 37 of 1996. In these circumstances, it cannot be said that a new inquiry is started after the appellant reached superannuation and that it could not have been initiated.

So far as delay is concerned, there is a word against word. We are of the view that this is not a case of double jeopardy. As observed by the Supreme Court in Chanan Singh v. Cooperative Societies, Punjab, AIR 1976 P.1821 ordinarily in exercise of extra ordinary powers under Art.226 of the Constitution, the High Court should not interfere at the stage when notice is issued in respect of holding of departmental inquiry. In that case, inquiry was initiated against the delinquent which came to be dropped. Thereafter, again fresh notice was issued and the inquiry was sought to be reopened. At that stage the appellant approached the High Court contending that the authority had no jurisdiction to start fresh inquiry. The Hon'ble Supreme Court held that at that stage there was no present grievance of a punitive nature as no action was taken against the delinquent. Regarding objection as to holding inquiry, their Lordships observed that "after all even the question of jurisdiction to re-open what is claimed to be a closed enquiry will, and must, be considered by the Managing Director." In our opinion, the point is concluded by Channan Singh (supra). We, therefore, do not see any reason to interfere with that part of the order.

Regarding costs, however, we are of the view that the learned Single Judge ought not to have directed the appellants to pay costs of Rs.5000/- to the respondents. From the affidavit-in-reply it is clear that some guidance was sought from the Government as to whether inquiry should be proceeded after so much long period. Thus, though inquiry was not dropped and this is not a fresh inquiry but the authorities were of the opinion as to whether the inquiry should be proceeded after such long period. In these circumstances, in our opinion, if the appellant has approached this court for some relief it cannot be said that the petition filed by the petitioner could be said to be of a vexatious nature or that it required an amount of Rs.5000/- towards costs to the respondents. In these circumstances, in our opinion that part of the order deserves to be set aside.

The appeal deserves to be partly allowed and accordingly partly allowed. The order regarding continuation of inquiry is not disturbed but the order of costs is hereby set aside. It is directed that the authority will complete the inquiry as expeditiously as possible. It is also expected that for that the appellant will also cooperate with the inquiry. No costs.

Dt. 3.4.1998. (C.K.THAKKER J.)

(A.L.DAVE J.)